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Central Intelligence Agency

Washington, D.C. 20505

15 April 1997

MEMORANDUM FOR: David G. Marwell
Executive Director
Assassination Records Review Board

SUBJECT: CIA Employees

(We request that this memorandum be returned to CIA once the Review Board has completed its deliberations on the issues discussed below.)

1. (U) Issue. The purpose of this memo is to relate CIA's concerns to the Review Board regarding the release of the true names of CIA employees that appear in the JFK Collection and to present a proposal on how this problem might be addressed.

I. Factual Background

2. (U) To date, approximately 600 true names of CIA employees have been identified in the JFK Collection. Some of these employees are important to the JFK story, and CIA will continue to work with the Review Board to release as many of these names as possible. Many names, however, appear only a few times in the entire JFK Collection and appear to add nothing to the historical record.

3. (U) Under guidelines adopted by the Review Board on or about 20 March 1996, any names of CIA employees are presumptively released unless CIA provides specific evidence to the Review Board that harm to the national security or to the employee would likely result from such release. Since these guidelines were adopted, it has become increasingly clear that the number of names at issue, and, in most cases, their tenuous connection to the JFK story, make this approach unworkable with regard to both CIA's obligation to

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protect national security information and the Review Board's duty to inform the public about the JFK assassination in a timely and accurate fashion. The task of locating and informing hundreds of former employees scattered all over the country and the world has been a formidable one. Some employees have contacted us to report their concerns about a "suspicious" letter purporting to be from CIA which they had received. It would not be surprising, therefore, if many former employees ignored the letter for similar reasons, even though they might have legitimate needs to protect their identities.

4. (U) Contacting every named employee and collecting information on each of them to present to the Review Board will clearly take more time and effort than any of us had anticipated. This will have obvious ramifications for how and when the Review Board releases information to the public. More importantly, the decision to publicly acknowledge employees who may have been living for over 30 years under cover is a critical one that should be made not by default, but rather by careful planning and consideration.

5. (U) Relevant to this discussion is the fact that the Review Board and CIA have recently agreed upon a policy for releasing true names of sources of intelligence information. It was agreed at that time that there would be a presumption of protecting source names; but in cases where a source was particularly important to the JFK story and there was no overriding national security interest, the name would be released. Although the CIA recognizes that there are some sensitivities involved with sources that do not apply to covert employees, there are also many legal and operational similarities, which are described herein, that justify similar treatment by the Review Board. As is further detailed in Section IV, CIA, therefore, proposes that the Review Board adopt a general policy of protecting employee names that appear in the Collection, with exceptions for those individuals whom the Board believes are important to the JFK story.

II. Legal Considerations

6. (U) As both covert CIA employees and clandestine reporting assets are types of "human sources" of intelligence, many of the same laws apply. Although Section 11(a) of the JFK Act provides that, when the Act requires release of information, it takes precedence over all other laws that would otherwise prohibit release, there are strong governmental national security interests in protecting the true names of CIA employees. CIA believes that it is

important for the Review Board to reconsider the laws which protect classified information, because they clearly reflect a larger US Government policy to protect covert CIA employees from disclosure.

7. (U) By Executive order and statute, the President and Congress have made the Director of Central Intelligence responsible for protecting sources of intelligence. In his Directive of 22 January 1946 that established the Central Intelligence Group, President Truman made the DCI responsible for protecting sources. With the establishment of CIA, Congress also gave the DCI this responsibility. The National Security Act of 1947, Section 103(d)(3), codified at 50 USC §403(3)(c)(5), *requires* the DCI to protect intelligence sources from unauthorized disclosure. In addition, §403(3)(d)(2) *requires* the DCI to ensure that risks to the United States and those involved in the collection of intelligence through human sources are minimized.

8. (U) Protecting the identity of individuals working for CIA, not only covertly but overtly as well, has been of particular concern to US lawmakers since the establishment of the Agency. For example, with Section 6 of the Central Intelligence Agency Act of 1949, 50 USC §403g, Congress specifically exempted the CIA from the provisions of any law requiring the publication or disclosure of the organization, functions, names, titles, salaries, or numbers of personnel employed by the Agency.

9. (U) In 1980, Congress passed the Classified Information Procedures Act (CIPA) which sets out pretrial, trial, and appellate procedures for criminal cases involving or potentially involving classified information. Working with the Department of Justice and the courts, CIA has successfully protected the names of CIA employees from public release even in criminal trials where there are heightened (i.e., constitutional) considerations favoring disclosure to the defendant of all government information relevant to the defense. CIPA allows for <u>in camera ex parte</u> hearings in which the judge can rule on questions of admissibility and relevancy of classified information, including the identity of CIA employees who may have information pertaining to the defense, before it is introduced either to the defendant, defense counsel, or in open court. In some cases involving CIA, the judge has ordered that CIA information be turned over to the defense, but only in some unclassified form such as in a summary. In other cases, judges have reviewed the classified information and ruled that the harm to national security outweighs the

defendant's legal rights to the information. In still other, cases, the defense was never notified that CIA even had information bearing on the case, as the judge ruled that the mere fact that CIA possessed this information was classified and outweighed any rights the defendant had. Moreover, under CIPA, the Attorney General has the authority to drop a prosecution in those cases where the risk to national security is too great.

10. (U) In 1982, Congress again acted to protect CIA employees by passing the Intelligence Identities Protection Act of 1982, 50 USC §421 that criminalizes the revelation of a covert employee or the identity of a source. This act subjects anyone who reveals information that identifies a "covert agent" to prosecution and provides up to 10 years in prison and $50,000 in fines as punishment. This act specifically defines a "covert agent" as including "an officer or employee of an intelligence agency... ."

11. (U) Most recently, President Clinton signed Executive Order 12958 on classified national security information that became effective in October 1995. Although it requires generally that agencies make greater declassification efforts than under the prior executive order, Executive Order 12958 affords human sources of intelligence information, which would include employees, extra protection from the declassification provisions. Under E.O. 12958, information that is over 25 years old and having historical value must be declassified within five years. However, information revealing the identity of a human source may continue to be protected.

12. (U) The above federal laws show a long-standing practice by the US Government to protect CIA employees from disclosure to the public. In carrying out its statutory obligations, the Review Board should give serious weight to this policy and afford the protection of CIA employees a high priority.

III. Operational Considerations

13. (U) For current CIA employees whose names may appear in the JFK Collection, the operational considerations for protecting their identity are similar to those for sources. Many of these employees have worked "under cover" for CIA. Cover is used to disassociate entire installations and offices from open linkage to intelligence activities, to enable intelligence personnel to enter and work effectively in foreign countries, to shield Agency employees and authorized clandestine activities from attention by hostile elements and from media exposure, to facilitate access to

certain individuals of intelligence interest, to prevent embarrassment to host foreign governments, and to permit plausible denial of CIA's presence and activities in foreign countries.

14. (U) The ability to maintain one's cover is crucial to gathering intelligence. In either a "hostile" or "friendly" country, should the local service become aware of who the CIA employees are, it would increase surveillance and make unilateral operations difficult if not impossible. In some countries, the local government tolerates the CIA presence and agrees to work with us as long as the local population is not aware of the circumstances. Once it becomes known among the locals that certain US Government officials are actually CIA, pressure may be placed on the government to expel those Americans, disrupting liaison and diplomatic relationships. More importantly, covert employees and their families would face increased risk to their personal safety. Even in "friendly" countries, our employees could face some personal risks as well as risks to ongoing operations from extremists who may be living among an otherwise benign local population. In any of these cases, should a covert employee's cover be publicly compromised, that employee may have to be recalled from the field; and it could be difficult to place him elsewhere in an operationally and physically secure location. Thus, maintaining cover is important to a case officer's effectiveness and to the continuation of a career with CIA.

15. (S) Maintaining the confidentiality of cover is also important to cover providers. The Review Board will recall from prior briefings by the Agency that covert CIA employees, both in the United States and overseas, can work under "official" (e.g., State Department) cover or "non-official" (e.g., private company) cover. Disclosure of a covert employee would not only be official acknowledgment of the specific cover mechanism employed by CIA but would also negatively affect the governmental or business mission of the cover provider, especially those who provide non-official cover. Acknowledgment of an employee who had been under non-official cover in a host country and possibly in other countries could have a negative impact on the provider's business interests and activities. It would also cast suspicion on that provider's legitimate employees and their families. Further, exposure of cover providers could affect the recruitment and cooperation of such providers by the Agency and Intelligence Community.

16. (S) Although the majority of names that appear in the Collection are retired CIA employees, the operational considerations in revealing their affiliation with CIA are

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not diminished. Similar to sources, many former employees still do not want their past affiliation with CIA revealed. Perhaps their current friends, family, or employers are not aware of this past affiliation; and revelation of that fact could negatively affect personal and professional relationships. Some former employees still live overseas where a revelation of CIA affiliation poses risks to their personal safety. Other former employees travel overseas on business, where a revelation of a past CIA affiliation can threaten their business interests and personal safety. One example of an employee in this category is Robert Fulton, whose name apparently appears only once in the Collection. Fulton retired under Department of State cover; he currently has a consultant business and frequently travels to China. Release of his name would jeopardize not only his business but perhaps even his safety. A similar example is Walter McCabe, who also retired under State cover. He is now working in Russia and several East European countries for a private firm. He does not want his name published, because it could be damaging to his current employer and his professional status.

17. (S) Even if a former employee agrees to the revelation of his name in the JFK Collection, this might not be possible for other reasons. In some cases, officially acknowledging a covert employee could threaten ongoing operations on which that employee worked. Foreign nationals recruited by the employee and still providing information to the US Government would be at risk of exposure. Public acknowledgment could reveal the location of CIA stations where the employee worked throughout his career, including some not released by the Review Board. Any individuals who had substantial contact with a former employee overseas and may have believed they were legitimately providing information to a US corporate representative would be upset to learn they were, in fact, aiding the US Government.

18. (U) Finally, the identification of case officers by their own service would have a chilling effect on prospective assets. Prospective assets would be unlikely to enter into a clandestine relationship with American intelligence if they believe that CIA does not protect even its own staff employees from public disclosure.

IV. Proposal

19. (U) In light of the foregoing, CIA believes it is important to work toward a general policy of protecting CIA employees identified in the JFK Collection, with exceptions made for those individuals who are important to the story of the assassination. The Agency proposes that in most cases a

substitution for the true name be used. If the Review Board is concerned about tracking particular employees throughout the records, a particular identifying substitution can be used for a particular employee.

20. (S) CIA believes that this approach will not undermine the Review Board's obligations under the JFK Act. A review of the JFK Collection reveals that approximately 84 of the 600 names appear only once in the entire Collection. In such cases, it is difficult to see how the individuals' identity can add anything of significance to the historical record; yet there may be some security concerns still associated with these individuals. For example, Arthur H. Stimson retired under cover and is currently living in Europe. When the CIA notified him that his name appeared in the JFK Collection and was subject to public release, he told CIA that he was opposed to having his name released and believed such a release could pose personal and security problems. Furthermore, he could not understand why his name even appeared in the Collection, since he had no recollection of being involved in anything related to the assassination.

21. (S) With regard to the approximately 500 names that appear more than once in the Collection, the vast majority of these individuals played almost no role in the JFK story. One example of this is former DO officer Alexander Brasko. His name appears approximately 20-30 times in the Collection simply because he signed off on name trace requests. Mr. Brasko was a covert CIA employee and retired under cover. The public release of his name would provide the public with no additional significant information about JFK. Tom Flores is another example of a covert CIA employee whose name appears in the Collection but has little or no connection to the JFK story. Flores retired under cover, is living in South America, and objects to the release of his name. Mr. Flores' recent letter to CIA is also attached for your convenience.

22. (S) The Agency, of course, recognizes that some names may be particularly important to the JFK story regardless of how frequently or infrequently they appear in the Collection. One such example is former COS Mexico Winston Scott who CIA has acknowledged as a CIA employee. In such cases, the CIA will continue to work with the Review Board for an appropriate resolution. The CIA proposes that the Review Board and its staff identify those individuals whom it believes are important to the JFK story and whose names should be released to the public. These names would carry a presumption of release unless specific evidence is provided to the Review Board that harm would likely result

from such release. The CIA will conduct the appropriate searches to determine whether release would pose national security concerns for the US Government or personal safety concerns for the individual. In this way, CIA and the Review Board can concentrate their efforts on individuals who are significant figures in the JFK story, expediting the review of the sequestered collection.

23. (U) It is our hope that the CIA and the Review Board can agree on and work out a mutually acceptable policy regarding the identity of CIA employees that will not undermine the important principle of protecting those who work covertly for the US Government. My staff and I are ready to discuss this matter with you at your convenience.

Michael J. O'Neil
Acting General Counsel

Attachment
A. 'Tom Flores' letter

Subject: CIA Employees

DCI/OGC/LD/LCCipriani 76124 (10 Apr 97)

OGC-97-50971

Distribution:
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17 March 1997

Ms. Beth Mills

Dear Ms. Mills,

Your letter of 4 March was delivered to me on 10 March, and this reply will be sent via the same channel.

I wish to go on record as demanding that my name not be released in ANY document disclosed concerning the Kennedy assassination.

First, I shall describe my present circumstances; and thereafter I will address the legal points in the legislation.

I retired in 1974 in a clandestine status, using a State Department cover, which has worked reasonably well since then. I reside in Caracas, Venezuela. This city (and the entire country) is still populated with Communists and ex-Communists who formed part of the Marxist conspiracy to overthrow the democratically elected Governments in the 1960s and 70s. Many of these persons are now members of Congress and a few are in the President's Cabinet. During my service in Venezuela, as COS, I maintained liaison with civilian and military officers, during which time I worked with these to overcome the guerrilla offensive, and to combat the Communist Party after it accepted "pacification." I left in 1972 and went to Vietnam, from which I returned to Venezuela as a private citizen. Because of my wife's long employment and friendships, we are as closely connected with the Jewish Community as two Christians can be.

Given my somewhat exposed position as COS, my true affiliation was known to a number of important Venezuelan Government officials. In any event, soon after my return, I was informed by the Venezuelan Government that an important Communist leader had learned of my return, and that "I was living in Urbanizacion Miranda (a small and somewhat isolated Caracas suburb) and that I was training right wing paramilitary personnel." They were right about where I lived, but

confused Boy Scouts with "right wing paramilitary personnel." I worked as a volunteer leader for the Boy Scouts of America and the Venezuelan Scout Association from 1974 to about 1991.

In any event, the Venezuelan Government was sufficiently concerned about the matter, that it offered me a group of bodyguards. I turned down the offer, and asked them to provide me with an automatic pistol for my protection. I still have that pistol.

The country has changed somewhat since that time. There are still a number of underground radical groups who resisted pacification, and try to foment violence wherever possible. Along the Colombian border they appear to be linked up with the Colombian ELN and FARC. In addition to these, the country has been infiltrated by radical Moslem movements. A Cuban Embassy, with its usual collection of intelligence officers, is located in Caracas. Further Iran, Iraq and Lebanon also maintain diplomatic posts here, and probably support the Muslim extremists.

Under present circumstances, my cover has prevented me from coming to the attention of these people. However, I feel very strongly that if my name is released, I will again become a potential target for these and other persons who wish to embarrass the United States and/or adversely affect U.S./Venezuelan relationships. I was recently decorated by the Venezuelan President for my contributions to good Venezuelan/American relations.

I have no intention of leaving Venezuela under any circumstances.

Any connection I may ever have had with the investigation of President Kennedy's assassination, was highly peripheral. Any documents which may be released, could include my job title (rather than my name) without reducing the value of said documents.

Since I will be quite dead in 25 years, I cannot object to my name being

released at that time.

Although not mentioned as an option in your letter, I would like to be permitted to review the documents containing my name which you are being obliged to release. When I retired, I gave up all links with former sources. One of these popped up in the New York Times last week. Some others may still be alive, and in need of protection, although as I recall, none had any useful data concerning the assassination. If the sources are to be exposed, I feel very strongly that they are entitled to all the protection we can afford them. I will be in the Washington D.C. area in November 1997, and would be willing to review these documents.

In terms of the provisions you cite for exceptions in your letter, (A) I consider myself a person (Agent?) whose identity currently requires protection.

The cover I am using, provided by the State Department, is (B) an intelligence method which is currently utilized.

The public disclosure of my name as part of the assassination record (C.3) could reasonably be expected to constitute an unwarranted invasion of personal privacy, and that invasion is so substantial that it outweighs the public interest. I cannot resist defining the public interest in this matter as "public morbid curiosity."

The public disclosure of my name as part of the assassination record (C.4) would probably compromise the existence of an understanding of confidentiality currently requiring protection between a government agent and a cooperating individual or foreign government, and public disclosure would be so harmful that it outweighs the public interest. I was COS in Bolivia when the assassination occurred. I was in close touch with the Bolivian Government security chief at that time, and with the Minister of Interior, and we probably interchanged data on the murder, although they could provide nothing useful. Also, the Station was probably tasked to query all of our sources on the matter, again with negative results. The revelation of my name and the identities of liaison contacts and unilateral sources would not only imperil me, but would also embarrass the Bolivian Government, and

could endanger current activities of the Agency in that country. I do not recall whether in my subsequent assignment as Chief of the Cuban Task Force, any mention of the assassination came up. However, if it did, revelation of my name could not only imperil those agents of the time who survive, compromise our operational methods, but also, make me a prime target for the Cuban intelligence service.

None of the above should be construed as a waiver of my rights, or those of my heirs, to take legal action to prevent the release of my name and/or to collect damages, both civil and punitive, resulting from the release of my name. There exists an implicit contract between me and the Agency dating from when I accepted the inconveniences of a clandestine retirement. The Agency undertook to provide a LASTING cover for me. It should be noted that this implicit contract predates Public Law 102-526 by some 18 years. Naturally, I am going to inform my legal advisor of this entire matter. I suggest that you pull together a set of all documents pertaining to my retirement, so that these can be made available for his review.

I refrain from comment about a U.S. Congress that would pass such a bill, and a President who would fail to veto it. (You of course, are not to blame.) The New York Times and the Washington Post, will, of course, be drooling to get their hands on your papers. I don't envy you because this is an extremely complicated matter. Unfortunately, the release on a lot of non-pertinent information will go a long way to reveal the scope and role of the Agency in Latin America to any analyst who wants to review the material and piece it together. I believe that this role is not significantly different today than it was when President Kennedy was murdered. Only the targets and the gadgets have changed.

Sincerely yours,

Thomas J. Flores